MAY 2 2 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

_____ Term, 1956

No. 965

ADELL C. CARTER, ALIAS PONTO
and
RONNIE MAE MATHIS,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

W. O. COOPER, JR.,
204 Bibb Building
Macon, Georgia,
Counsel for Petitioner.

JOHN M. ROBBINS,
Macon, Georgia
Of Counsel.

INDEX

	Page
Opinion Below	1
Appendix A, Opinion of Circuit Court of Appeals for Fifth Circuit	2
Appendix B, Judgment	8
Appendix C, Order Denying Motion for a Rehearing	8
Jurisdiction	9
Questions Presented	9
Statutes Involved	10
Statement of the Case	11
Statement of Facts	11
Reasons for Granting Writ	15

CITATIONS

Cook vs. United States, 117 F. (2d) 352 (C.A. 5)	16
Hargett vs. United States, 183 F. (2d) 859	16
John Bad Elk vs. United States, 177 U.S. 530	16
Latham vs. United States, 226 F. (2d) 420 (C.A. 5)	17
Owens vs. United States, 201 F. (2d) 749 (C.A. 4)	16
Palmquist vs. United States, 149 F. (2d) 352	16
Pettibone vs. United States, 148 U.S. 197	15

IN THE

SUPREME COURT OF THE UNITED STATES

_____ Term, 1956

No. _____

ADELL C. CARTER, ALIAS PONTO
and
RONNIE MAE MATHIS,
Petitioner

vs.

UNITED STATES OF AMERICA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner Adell C. Carter, alias Ponto, and Ronnie Mae Mathis most respectfully petition this Honorable Court to grant the Writ of Certiorari to review the decision and judgment of the United States Court of Appeals for the Fifth Circuit in the above case.

JUDGMENT AND OPINION OF THE COURTS BELOW.

The judgment of the United States District Court for the Middle District of Georgia, Macon Division, was entered on the 29th of April, 1955, as to petitioner Adell C. Carter, alias Ponto and Ronnie Mae Mathis, and is not reported, but is printed in the record filed with the clerk of the Court of Appeals as to Carter, (R.-110-111) and as to Mathis, (R.-112-113).

The opinion of the United States Court of Apeals for the Fifth Circuit, affirming said judgment, was filed March 27th, 1956, and is not yet reported but is set forth in the appendix hereto.

APPENDIX A

IN THE

UNITED STATES COURT OF APPEALS

For The Fifth Circuit

No. 15734

ADELL C. CARTER, alias PONTO, and RONNIE MAE MATHIS,

Appellants,

versus

UNITED STATES OF AMERICA,

Appellee.

Appeal from the United States District Court for the Middle District of Georgia.

(March 27, 1956.)

Before BORAH, TUTTLE and BROWN, Circuit Judges.

BROWN, Circuit Judge: Armed with his badge of office, protected by the power of the sovereign whose work he was doing, but unequipped with shoulder pads, crash helmet or other paraphernalia adequate for the event, Poe, a United States Internal Revenue Agent, underwent a harrowing experience while desperately trying to maintain his precarious hold on Carter's convertible as it was speeding 60 miles per hour through the streets of East Macon, Georgia. For thus imperiling an officer in the performance of

duty, Carter and his companion were found guilty of forcible obstruction and interference under 18 U.S.C.A. 111.[1]

It all came about as Governments Agents were conducting a search of the Lincoln Club, a "juke joint" in East Macon, Georgia, seeking evidence of lottery operations by persons who had not obtained gamblers' occupation tax stamps, 26 U.S.C.A. 3290-3294. While the search, under a search warrant, was in progress, several persons were arrested as they came into the Club possessing brown paper sacks which were found to contain money and lottery tickets. The driver of an automobile arriving shortly before Carter's likewise had in his possession the hallmark of the calling — the brown paper sack. Shortly, Carter's vehicle stopped on the Club's parking lot (included within the premises described in the search warrant) about eight feet from the Club's entrance, and as the car's horn was blown, someone said, "There's Ponto"— a term Poe knew to be Carter's usual nickname. From reliable informants several days before, Poe knew that Ponto was in the lottery business.

Poe immediately went outside, proceeded directly to Carter's vehicle, opened the car, simultaneously saying, "Ponto, I am a Federal Officer" and saw on the rear seat floor the telltale brown sack. Events were occurring rapidly. Ponto said, "If you're a Federal Officer, show me your badge," but before Poe could get his badge from his pants pocket, Ponto abruptly started up the car. This left Poe neither in nor out, but with the door slightly open, one foot on the floor, one hand on the back of the front seat, and the other on the vent shield, he managed somehow to hang on. To Poe's repeated insistence that he was a Federal Officer, Ponto gave the same refrain, "Show me your badge." In the meantime Ronnie Mathis, holding her infant child in her arms, attempted to push Poe's arm and hand away

---

[1] 28 U.S.C.A. 111: "Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in Section 1114 (this includes Internal Revenue) of this Title while engaged in or on account of the performaance of his official duties shall be fined not more than $5,000.00 or imprisoned not more than three years, or both. * * *"

from his grip on the back of the front seat. Ponto reached back, got the brown sack,[2] threw it out, and then started slowing down. Poe could now safely reach his pants pocket and when his badge was displayed, Ponto stopped.

Appellants insist that since they had no reason to know that a person dressed, as was Poe, in ordinary civilian sports clothes was a Federal Officer, they had the right to flee, were under no duty to give Poe a free and safe ride and could take all indicated action to shake their intruder.[3] And, if their knowledge of Poe's status was a jury issue, then, they claim, the same avenues were open since the search of the automobile was illegal and no valid arrest was, or could have been, made.

None of these contentions is sound. Undercutting all of them is the jury's finding implicit in the verdict of guilty that each knew that Poe was a Federal Officer engaged in his official duty. This was a fact essential to conviction, but provable as any other fact. It is not for the defendant either on the trial for the obstruction, or in the event giving rise to it, to lay down the requirements as to the nature or kind or amount of proof of the Officer's status. His badge, his written credentials, his Commission are not the only means. His declaration of his official status may well be enough,[4] **Palmquist v. United States,** 5 Cir., 149 F.2d 352; **Cook v. United States,** 5 Cir., 117 F.2d 374; **Owens v. United States,** 4 Cir., 201 F.2d 749; cf. **Hargett v. United States,** 5 Cir., 183 F.2d 859, especially where, as here, it is repeatedly made, and its acceptance as the truth by defendants is credited through the jury's verdict of guilty.

---

[2] The paper sack was soon retrieved by a fellow officer; as anticipated, it contained money and lottery tickets.

[3] Asserting that escape was from apprehension of personal harm, appellants' brief describes it: "We submit that it is a national condition, that when a Negro is confronted with something he is going to run if he gets half a chance and all this Negro man did was try to run and get away. * * * Under these terrifying and frightening circumstances that appellant suddenly found himself, * * * we believe the ruler of the lower regions would not have debated at any great length the wisdom of standing his ground, much less a Georgia Negro."

[4] As to Ponto, the jury had additional evidence to credit showing prior brushes with the law and contact in them with Poe as a Federal Officer.

Knowing that Poe was a Federal Officer in performance of his duty, what appellants[5] did was manifestly a forcible interference. To abruptly start up the car and then perversely continue driving it at constantly increasing speed while Poe was precariously perched desparately struggling to maintain his hold and get in the car to avoid serious and certain injury were he to fall, makes it all an obstruction and interference by the use of force. Since it all began so quickly, Poe's efforts to get into the car were as much an automatic reflex for self-preservation as they were a means of gaining access for search or other purposes. And whatever his right as an officer or an individual citizen might have been to **enter** the car, the moment it suddenly started up putting him in this predicament of great peril, he was entitled, in overcoming this unlayful obstruction, to use all of these means to prevent injury to himself. Nor is this to be viewed as though Poe was intent only on a search and subsequent arrest if he found evidence of likely guilt. Poe's function is not so limited. Whatever might, for example, have been Ponto's duty to answer, Poe undoubtedly had the right to ask questions. Ponto could not run him down to keep this from happening.

Though the matter is not to be determined solely by the legality of a search of Carter's automobile or the possibility of an arrest of the appellants, **Palmquist v. United States, supra;** cf. **Whipp v. United States,** 6 Cir., 47 F.2d 496, it is clear that the search of the vehicle was not unreasonable in violation of the Fourth Amendment. The officers had reliable information that Ponto was engaged in the lottery business and, with others, would likely use the Lincoln Club in the trade. Others, as they came on the premises, were found possessing the brown bags containing the fruits and means of the traffic, and at least one other was known to have used an automobile in the business. When Ponto's car rolled up to the Club, and prior

---

[5] Ronnie Mae Mathis's complicity is minor, which undoubtedly accounts for her light, and suspended, sentence, but her act in attempting to dislodge Poe's grip on the seat was sufficient to make her a principal under 18 U.S.C.A. 2(a) as one aiding and abetting.

information about him and these operations and the confirmation of its general reliability from the searches and arrests thus far made on those premises, gave ample basis at that time for a discrete and prudent officer concluding that Carter was engaged in the traffic and would be carrying evidence of it in his automobile, **Wyche v. United States,** D.C. Cir., 193 F.2d 703; cf. **Rhodes v. United States,** 5 Cir., 224 F.2d 348.

There was, of course, no opportunity then to obtain a search warrant for the car alone, and Ponto's hasty flight in heedless disregard of Poe's safety shows quite plainly that the vehicle would have been long gone had the officers retired to a magistrate for a formal warrant. It thus met all of the tests for a valid [6] search of a swift and moving and vanishing thing. **Carrol v. United States,** 267 U.S. 132, 69 L.Ed. 543; **Husty v. United States,** 282 U.S. 694, 75 L.Ed. 629; **Cannon v. United States,** 5 Cir., 158 F.2d 952; **Brinegar v. United States,** 338 U.S. 160, 93 L.Ed. 1879; **Scher v. United States,** 305 U.S. 251, 83, L.Ed. 151; **Medina v. United States,** 5 Cir., 158 F.2d. 955; **Turner v. Camp,** 5 Cir., 123 F.2d 840; cf. **Rent v. United States,** 5 Cir., 209 F.2d 893; **Shurman v. United States,** 5 Cir., 219 F.2d 282.

The remaining complaints have no substance. As an arrest or an attempted arrest at the time Poe first came up to the car was not made, the legality of Poe's or Ponto's actions are in no way affected by the legality or illegality of an arrest which did not take place. The charge that a mistrial had to be granted and that the Court's admonition to disregard the matters was inadequate for a spontaneous unsolicited answer[7] of a witness, and the prosecutor's statement that he had other witnesses available

---

[6] This also disposes of the asserted error for declining the motion to suppress the evidence of what Poe saw, the brown bag, and later information of its contents—money and lottery tickets —furnished by officers who picked up the brown bag after Ponto threw it out of the car in flight. Palmquist v. United States, supra.

[7] During Poe's cross examination, this occurred:

"Q: And you expect him to identify either one of you gentlemen that stopped him on any one of these occasions?

"A: The ones he knows, yes, sir. The bootleggers make it their business to know the officers."

who would testify as had the others likewise fails. The witnesses' reference to Ponto as a bootlegger came rather naturally from the pressing cross examination testing and probing and challenging the credibility of the officers' testimony that Ponto, from prior occasions, knew Poe's status as a Federal Officer. The second incident was an offhand and unprejudicial remark casually made to indicate that the Government, out of deference to court and jury, was attempting to expedite the trial. Each was an occurrence of the kind likely to happen for which the District Judge is given wide power to handle with appropriate instruction as his informed discretion and judgment indicates.

The judgments of conviction were right and are AFFIRMED.

A True Copy:
Teste:

(Seal)

JOHN A. FEEHAN, JR.
Clerk of the United States Court of
Appeals for the Fifth Circuit.

APPENDIX B

JUDGMENT

Extract from the Minutes of March 27th, 1956.

ADELL C. CARTER, alias PONTO,
and RONNIE MAE MATHIS,
No. 15734

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgments of conviction of the said District Court in this cause be, and the same are hereby, affirmed.

APPENDIX C

ORDER DENYING REHEARING

Extract from the Minutes of April 24th, 1956

ADELL C. CARTER, alias PONTO,
and RONNIE MAE MATHIS
No. 15734

versus

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

STATEMENT OF GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

Jurisdiction of this Court is invoked under 28 U.S. Code, Section 1254 (1).

QUESTIONS PRESENTED FOR REVIEW

Question I.

Did the Court of Appeals err in affirming District Court in denying motion for directed verdict of not guilty made when Government rested its case, (R.-84, 85, 86, 87, 88, and 89), and renewed at close of all the evidence for Government in the case, (R.-94, 95, 96, and 97), because, first, as contended under the record, the Government failed to prove by substantial evidence beyond a reasonable doubt that the two defendants (petitioners herein) knew that Brack Poe was a Federal officer and an investigator of the Internal Revenue, and an employee of the United States Government, as indictment charges. Second, the Government failed to prove by evidence beyond a reasonable doubt that the defendants forcibly resisted, opposed, impeded, intimidated, or interfered with the officer in the performance of his official duties. Third, the officers of the Government had no search warrant to search defendants' (petitioner Carter) automobile and no probable cause existed to search in absence of a warrant. Fifth, no warrant was had by officers making arrest of petitioners and no crime committed in their presence.

Question II

Does a Court of Appeals err in affirming the judgment of the Court below in refusing to grant petitioners' motion for mistrial when the Government's chief witness, Brack Poe, in his testimony on cross and not responsive to question propounded called petitioners bootleggers when the record and the question did not authorize the statement of witness? (R. 26, 27.)

Question III

Did the Court of Appeals err in sustaining and affirm-

ing judgment of District Court in declining and refusing to suppress and exclude the testimony of Government's witness, agent Brack Poe and J. M. Southerland, relating to search of automobile of petitioner Carter and any facts or circumstances as to what was found or thrown out of the automobile, the officers having no search warrant and having had ample time and opportunity according to officers to procure one? (R. 94, 95, 96, 97, and 98.)

Question IV

Does a Court of Appeals err in affirming judgment of District Court in not withdrawing case from consideration of jury upon its own motion because of an unfair, improper, and prejudicial remark made in presence of jury by District Attorney and does the withdrawal of the remark by the District Attorney and the District Court Judge cure the error to the extent as to preserve petitioners' right to a fair and impartial trial such as they are guaranteed under the Constitution of the United States?

Question V

Does a Court of Appeals err in holding and deciding in a case where the Government is prosecuting petitioners for a violation of Title 18 U. S. Code Sect. 111, which alleges as one of the essential elements of its indictment and necessary to be proved before a legal conviction can be had for resisting and interfering with a federal officer that petitioners then and there well knew the said Brack Poe to be an investigator of the Internal Revenue and to be an officer and employee of the United States, while engaged in the performance of his duties, by holding and deciding in their opinion. "His declarations of his official status may well be enough," without other substantial evidence to satisfy this essential element of the indictment beyond a reasonable doube?

STATUTES INVOLVED

28 U. S. Code, Sect. 1254, (1) Appendix D.

18 U. S. Code, Sect. 111.

STATEMENT OF THE CASE

Appellants Adell C. Carter, alias Ponto, a Negro man and Ronnie Mae Mathis, a Negro woman, were charged in a one count indictment. The indictment alleging that on or about June 9, 1954, within the Macon Division of the Middle District of Georgia, Adell C. Carter, alias Ponto, and Ronnie Mae Mathis, hereinafter referred to as Petitioners, did unlawfully and forcibly resist, oppose, impede, intimidate, and interfere with investigator Brack Poe of the Internal Revenue, and the defendants then and there well knew the said Brack Poe to be an investigator of the Internal Revenue and to be an officer and employee of the United States, while engaged in and on account of the performance of his official duties; all in violation of Title 18-111, United States Code. (R-2).

Both defendants entered their plea of not guilty on April 21st, 1955 and trial ensued. Thereafter, on April 22nd, 1955 the jury returned a verdict of guilty as to both defendants. (R-4). On April 29th, 1955, the Trial Court entered judgment of conviction and sentened petitioner, Adell C. Carter, to serve two and one-half years imprisonment and petitioner Ronnie Mae Mathis, to serve one year and one day imprisonment and then suspended said sentence and placed her on probation for a period of five years. (R. 111, 112). Within time provided for by law petitioners filed their motion for a new trial and renewal of their motion for acquittal. (R. 113). Hearing on the motion was originally set for June 3rd, 1955, and continued until July 15th, 1955. After a hearing by the Court the motion for a new trial was denied on July 15th, 1955. (R. 116, 117). On same date petitioners filed their Notice of Appeal and Statement of Points on Appeal. (R. 119, 123). The United States Court of Appeals affirmed the judgment of the District Court on March 27th, 1956, and denied their motion a rehearing on April 24th, 1956.

STATEMENT OF FACTS

The evidence for the Government shows that a search warrant was obtained by certain officers of the Internal

Revenue, among whom was Officer Brack Poe, to search the place of business located at 1004 Smith Street, in Macon, Bibb County, Georgia, known as the Lincoln Inn, and operated by Jim Haywood, Sr., a colored man, for lottery paraphernalia and lottery operation.

The search warrant was executed on June 9th, 1954. The officers went to the place in the early afternoon. While searching inside the building Officer Brack Poe testified (R. 6) that a 1952 Buick convertible automobile drove up and he made the statement, "That's Ponto," (Adell C. Carter, petitioner). Officer Poe testified further that he went out of the building of the Lincoln Club Inn and came upon the other side of the automobile and opened the door and there was a small brown paper sack sitting on the floor. (R. 7) That the officer said, "Ponto, I'm a Federal Officer. You're getting yourself in trouble. You'd better stop." Then appellant stated: "If you're a Federal Officer, show me your badge." That appellant immediately started his automobile off. That the door was partly open and Officer Poe tried to get inside of petitioner's automobile. The officer had one hand on back of front seat and one on the vent shield. Officer Poe states he turned off the ignition and petitioner turned it on and started down the road at a high rate of speed. (R. 7).

Carter stated: "If you're a Federal Officer show me your badge." Officer Poe testified further for the Government that Carter went on down Mitchell Street and made a turn and that he was still hanging on side of automobile, trying to get in, and stating he was Mr. Poe and Carter was asking to see his badge.

Officer Poe testified (R. 8) that while he was trying to get in back seat of automobile, Ronnie Mae Mathis, was sitting in front seat with a baby in her arms, that the two little children were in the back seat and she would not let him in the back seat and at one time reached back and touched his arm and he almost fell. The officer testified further that Carter reached over petitioner Mathis and got a paper sack and threw it out window and began slowing down. (R. 8).

The officer testified further that when he pulled out his pocketbook and showed Carter his badge Carter stopped his automobile immediately. (R. 9).

Cross examination of Officer Brack Poe. (R. 12-33).

On cross Officer Poe testified that he was dressed in a pair of slacks and a green sports shirt, that he had no badge or anything indicating that he was an officer which was visable to petitioners. His only identification that he was an an officer was his badge which he had in his billfold, concealed in his pocket.

The officer testified on cross that petitioner Mathis said nothing to him during the entire episode and that Carter asked the officer on numerous occasions to show his identification as an officer. The witness continued to say, "I am Mr. Poe," which indicated nothing to petitioner.

The record will show that immediately upon the officer showing his badge, Carter stopped his automobile and submitted to arrest.

The officer contended in his testimony that Carter should have known he was an officer because he had stopped him on three or four occasions—twice in one day, a year or a year-and-a-half previously and twice on a night three or four years ago. As to petitioner Mathis, the officer stated he did not know her and that she did not know him. (R. 23).

The officer testified the only act or move petitioner Mathis made during the entire transaction was to touch or push his arm off of back seat of automobile while she was holding the baby in her arms.

Officer James M. Southerland testified (R. 69) he was present when Carter drove his automobile up near the Lincoln Club and heard Officer Poe say, "Federal Officer, what's in that sack?", and almost immediately the back wheels on the automobile commenced to grind in the dirt, that Officer Poe had jerked the door of the automobile open and was running along the side trying to get in the automobile. Officer Southerland began screaming to stop and also he fired his pistol, that when he fired the shot the

automobile of Carter and Officer Poe was as close as from the witness stand to the jury box. We respectfully contend the transcript of the record will show that neither Carter nor Ronnie Mae Mathis knew or had any knowledge that Officer Poe was a Federal Officer until after he had disclosed his identity by showing his badge and when the officer did so Carter immediately stopped his automobile.

We contend the record shows that petitioner Mathis was merely riding in the car of Carter as a guest with her three small children when the officer endeavored to jump in Carter's automobile and ordered him to stop. We contend the record will show the Federal Officers had no search warrant to seach the automobile of Carter. (R. 33), no warrant for arrest of the petitioners and no crime was being committed in the presence of officers sufficiently to have warranted an arrest without a warrant.

The record shows the officer stated when he looked in the automobile he saw a small brown paper sack on the floor of the automobile. He had no knowledge at the time of what the sack contained, if anything. (R. 7, R. 30). The brown sack allegedly containing lottery tickets and money allegedly thrown from the automobile by Carter was never offered in evidence by the Government.

Officer Poe testified he did not know what the small brown paper sack contained until after it was picked up by a co-officer in the road. (R. 56.

We respectfully contended neither petitioners knew the officer was a Federal Officer as alleged in the indictment which must be proved before a legal conviction can be had. Further the officer had no search warrant to search the automobile of Carter and no warrant to arrest petitioners and no offense was being committed in his presence to justify an arrest without a warrant. (R. 60).

We contended further any citizen of the United States has a right to resist an illegal arrest and a right to resist an illegal arrest even though he might know the official status of the officer making the arrest.

REASONS FOR GRANTING THE WRIT

The decision herein is not in accord with the applicable decisions of this Court.

The decision of the Court below is in conflict with the holdings of this Court as we conceive it to be in **Pettibone vs. U.S., 148 U.S. 197,** wherein this Court stated at page 197, Headnote (1):

"An indictment against a person for corruptly or by threats or force endeavoring to influence, intimidate, or impede a witness or officer in a Court of the United States in the discharge of his duty must charge knowledge or notice, or set out facts that show knowledge or notice, on part of the accused that the witness or officer was such".

Further, in the Pettibone Case (cited ante) on page 205 this Court held as follows:

"In cases of that sort it is the official character that creates the offense and the scienter is necessary".

If it is necessary that the official character of the person must be known to petitioners as alleged in the indictment then it likewise follows this element must be proved and without such proof a legal conviction cannot stand.

The Court of Appeals held and decided in its opinion in this connection on page 4 of opinion as follows:

"His badge, his written credentials, his commission are not the only means. His declaration of his status may well be enough".

Could not the absence of any other credentials other than declaration of his official status or name, permit any person to disguise or name himself a Federal officer and take advantage of a citizen?

We believe the opinion of the Court below probably set forth a standard of proof in this case as to knowledge upon the part of petitioners as to the official character of the witness for the Government (in holding that his declaration of his official status may be enough) is in conflict with the decisions of this Court and its own prior de-

cisions on question of needed proof to put defendants on notice of official character of person.

Hargett vs. U. S. (CA-5) 183 F.2d 859. "A motion for a judgment of acquittal should have been granted under evidence in this case. The United States should have been required to prove that the defendants knew or had knowledge of such facts as to put them definitely on inquiry that the circling car contained Federal officers in the discharge of their duty before a conviction could have been sustained."

The Court of Appeals held further as follows in the Hargett case (cited ante):

"Where defendants stopped an automobile containing strange men which were cruising suspiciously around home of defendants in which there were large sums of money, and defendants inquired as to purpose of cruise, and defendants had fire arms and were prepared to resort in event mission of occupants in automobile were unlawful and defendants immediately withdrew upon ascertaining that automobile contained Federal officers, defendants were not guilty of assaulting, resisting, opposing, impeding, intimidating and interfering with Federal officers, as against contentions that pre-existing knowledge of defendants that occupants of automobile included Federal officers, was unnecessary to justify conviction." Also see: **John Bad Elk vs. U. S., 177 U. S. 530.**

In connection with the above authorities petitioner Carter contends before this Honorable Court that he did not use any deadly weapons, did not do anything of a physical nature, did not touch the officer. He says that all he did was the starting in motion of his automobile in an effort to get away and the officer put himself in a perilous position by attempting to get into the moving automobile.

In the case of **Palmquist vs. U. S. (C.A. 5) 149 F.2d 352,** the appellants used a shot gun in resisting a Federal officer. In the case of **Cook vs. U. S. (C.A. 5) 117 F.2d 374** a brutal beating was administered upon a Federal officer. In the case of **Owens vs. U. S. (C.A. 4) 201 F.2d 749** a

deadly weapon was used in resisting a Federal officer. Both petitioners claim there was no substantial evidence to support the issue that they resisted, opposed, impeded, intimidated, and interfered with a Federal officer in the discharge of his official duties with knowledge of his official character.

(Opinion, Appendix, page 7)

This part of the opinion is in conflict with the opinion of the same Court of Appeals in **Latham vs. U. S., (C.A. 5) 226 Fed. 420,** a case involving the prejudicial remarks of a District Attorney in the presence of the jury, where Court says, in Headnote 2, as follows:

"In a prosecution for devising a fraudulent scheme for obtaining money, etc., by means of the post office, by advertised medical treatment, where the issue was whether the scheme was devised with a fraudulent intent, and where only one witness testified that he had paid money to defendants, the District Attorney's remark in closing, that had the train not been late, he would have had another witness who would have testified that he had been defrauded, though the Court at once cautioned the jury not to consider it, it was prejudicial to defendant's right to a verdict on the testimony of witnesses."

The Court in passing upon this question said, as follows:

"The prosecuting attorney is usually a person of considerable influence in the community and the fact that he represents the Government of the United States lends weight and importance to his utterances. He does not occupy the position of a defendant's counsel, but appears before the jury clothed in official raiments discharging an official duty. The realization of these considerations should lead the officer to the exercise of the utmost care and caution in making statements before the jury and should induce him to confine his argument and statements to the testimony of the witnesses in order that no right of defendant is violated." The above case was reversed by the Court of Appeals.

COURT OF APPEALS — CERTIORARI

Cases in the Courts of Appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon petition of any party to any civil or criminal cases, before or after rendition of judgment of decree. June 25th, 1948, c 646, 62 Stat. 928, 28 U.S. Code Section 1254 (1).

The opinion and judgment of the Honorable Court below, if permitted to stand, will result in prejudice to the substantial rights of petitioner and to other persons whose cases might be decided in a similiar way, contrary as we believe, to the decisions of this Court.

CONCLUSION

For the foregoing reasons, this petition for Writ of Certiorari should be granted.

Respectfully submitted,

W. O. COOPER, JR.,
Counsel for Petitioner.

P. O. Address:
204 Bibb Building
Macon, Georgia

JOHN M. ROBBINS,
Of Counsel.

UNITED STATES OF AMERICA
GEORGIA, BIBB COUNTY:

This is to certify that I have, this _____ day of May, 1956, caused to have been transmitted by due course of mail, properly stamped, and by air-mail, properly stamped and addressed, a printed copy of this petition for Writ of Certiorari to the Honorable Simon E. Sobeloff, Solicitor General of the United States, to his office in the Department of Justice at Ninth and Constitution Avenue, N. W., Washington, D. C., as provided by Rule 33 section (B) and that I further certify I have mailed, properly stamped and addressed a copy of this petition for Writ of Certiorari to the Honorable Frank O. Evans, United States District Attorney and the Honorable Floyd M. Buford, Assistant United States District Attorney for the Middle District of Georgia to their post-office address, Room 303 in the United States Post Office Building at Macon, Georgia, as Counsel for Respondent, the United States of America.

This the _____ day of May, 1956.

W. O. COOPER, JR.,
Counsel for Petitioners

P. O. Address:
204 Bibb Building
Macon, Georgia